

SACANDAGA PROTECTION COMMITTEE



“United by common sense . . .”

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Summer 2011 Community Update

The Sacandaga Protection Committee (SPC) is an all volunteer, not-for-profit corporation formed in May 2009. The SPC fights for permit holders' exclusive use of permit lands, opposes the Department of Environmental Conservation (DEC) belief that the band of land surrounding the lake is "forest preserve," and represents the legal interests of the Great Sacandaga Lake community.

Our board of directors has retained top-notch legal representation to determine our rights, strategize our legal positions, and advocate on behalf of the lake community. Working with our attorneys, we have developed solid relationships with the Hudson River-Black River Regulating District (HRBRRD) and state and local politicians; we now have a significant voice in Albany.

In this update, we've identified some of our past successes, our position on various issues, our goals, objectives and our fundraising needs. To learn more about any of these issues or to ask questions, please visit our website at www.lovetheSacandaga.com.

Exclusive Use:

The issue of exclusive use of the permit lands remains our top priority. During the HRBRRD rulemaking process of 2009, the DEC proposed elimination of permit holders' exclusive use of permit lands, proposing instead to open this land up to the public. Immediately upon formation in 2009, the SPC, working with other community groups, successfully mobilized and encouraged the lake community to voice opposition to the proposed HRBRRD rule changes (and DEC claims), which were ultimately suspended. We held public meetings and shared with the community the threats and impact of the forest preserve designation for permit holders, local businesses and the local economy.

Following the immediate threat posed by the proposed 2009 permit system rule changes, our next goal was to protect the permit system (and exclusive use of permit lands) that has been in place and effectively working for the last 80 years. After multiple meetings with the HRBRRD executive director and its attorney, DEC staff, and Governor Patterson's staff, Daniel Spitzer (our attorney from Hodgson Russ) attended the May 2010 HRBRRD board meeting in Johnstown, New York. After Mr. Spitzer's presentation, the HRBRRD board took the highly unusual step to immediately vote to return "exclusive use" to permit signs and permit applications.

The HRBRRD has agreed to replace permit holder signs that do not include the "exclusive use" language (this generally applies to signs installed between 2007 and early 2010). We have had a number of requests asking how to go about getting the signs replaced. The HRBRRD has advised that any permit holder who would like their sign replaced should make a written request to the HRBRRD.

Despite our efforts and progress in restoring exclusive use at the HRBRRD level, the DEC continues to assert that the permitted lands should be classified as forest preserve and open to the public. Moving forward, we are evaluating several alternatives that would provide a permanent solution to the issue of the exclusive use of permit lands. However, we must remain diligent in our defense of the existing system while we explore alternatives.

Forest Preserve Issue:

The “forest preserve” land designation issue goes hand-in-hand with the exclusive use issue.

The SPC has successfully delayed claims by the DEC that the 129-mile shoreline is forest preserve and DEC efforts to strip permit rights from permit holders and businesses. The DEC’s position has not changed; they believe the buffer strip of land around the lake is forest preserve. The DEC says private enterprise is not allowed on state land, especially forest preserve. If we are not successful in defeating this designation, marinas and businesses on the lake may be forced out of business.

When the Great Sacandaga Lake was created in the 1920s, the area was not wilderness or forest preserve. It was comprised of farmland, factories, communities, a thriving railroad, and even an amusement park. The fact that this area was not wilderness or forest preserve can be seen in the relocation of 12,000 homes and the transfer of nearly 4,000 bodies from 22 local cemeteries. The history of New York State’s action passing legislation for the reservoir and acquiring land bolsters the fact that this is not forest preserve.

The state has not designated this land as “forest preserve.” The Adirondack Park Agency (APA) has statutory authority to classify state-owned land in the Adirondack Park and has not classified the land under the Adirondack Park State Land Master Plan or in the related official maps.

Even if the land around the lake is ever classified as forest preserve, this does not support the proposed permit system and lake access changes. “Forest preserve” is not a one-size-fits-all designation. The DEC’s website shows that forest preserve uses differ greatly depending on the specific sub-classification. The HRBRRD and the state should be transparent about exactly what classification they are seeking to impose on lands surrounding the lake and they should not seek to create wilderness where none exists.

Our board members and legal team continue to work with representatives of Governor Cuomo’s office, HRBRRD, state legislature, DEC and APA to monitor any activity related to the land classification of the buffer strip and to explore a classification that would permanently preserve permit holders’ exclusive use of these lands.

Nimo (Niagara Mohawk)/National Grid Lawsuits:

The SPC authorized Hodgson Russ attorneys to request legal intervention in Niagara Mohawk (Nimo)/National Grid’s federal lawsuit against the HRBRRD. There were a number of claims in this lawsuit; however, the one that posed the largest threat to the lake community was Nimo’s claim that the permit system was illegal and must be discontinued. We were successful in petitioning the court to grant the SPC intervener status in the lawsuit. As an intervener, the SPC filed legal arguments opposing the lawsuit and elimination of the permit system. Chief District Court Judge

Norman A. Mordue of the United States District Court for the Northern District of New York granted the SPC and HRBRRD request for summary judgment and dismissed Nimo's lawsuit. The SPC's role in the dismissal of the lawsuit was significant; in fact, the SPC's arguments were cited extensively in the decision to dismiss suit.

Nimo/National Grid has now appealed this decision, asking for \$5 million for repayment of 10 years of property tax payments made to HRBRRD, plus attorney and court costs. In addition to this appeal, Nimo/National Grid also filed lawsuits in state courts repeating the same arguments they made in the federal filings. Due to the significance of this lawsuit and specifically the threat to the permit system, the SPC authorized our attorneys to again petition the court for intervener status so that we can be sure the rights of the permit holders are protected.

We obviously believe it is in our best interest to ensure the permit system is not ruled illegal and eliminated. It is not the HRBRRD's primary responsibility to protect the permit system and permit holders, therefore, we need to be vigilant and protect our interests. Our attorneys will continue to monitor developments in these lawsuits and we will respond accordingly.

HRBRRD Board Seats:

The SPC feels it is very important to have good representation and leadership on the HRBRRD board. The SPC identified and interviewed qualified candidates for open board seats and presented our recommendations to the Governor's Appointment Office. We are pleased a candidate recommended by the SPC was appointed to the board in 2010.

We encourage permit holders and members of our community who may be interested in serving on the HRBRRD board to contact us to discuss the possibility of future appointments.

The Local Property Tax Issue:

A 2008 Federal Court of Appeals ruling (separate from the National Grid lawsuit discussed above) in favor of the power producers that benefit from the Conklingville Dam, has left the regulating district with a significant revenue shortfall, preventing it from paying its 2009 and 2010 property taxes. The district has billed five downstream counties for flood protection to make up the difference. The counties have refused to pay and have filed a lawsuit against the HRBRRD. The District won the first round but the counties have appealed. Saratoga County has paid the local school districts the taxes owed by the HRBRRD. In Fulton County, the schools were not paid by the county and had to absorb the shortfall.

The SPC has asked our Congressmen to search for a federal solution to the revenue problem. The SPC believes the power producers, as part of the Federal Energy Regulatory Commission Licensing Agreement, agreed to reimburse the District for property taxes and that this should be included in any beneficiaries study. We are actively working with our legal team, the HRBRRD and our federal elected officials to identify potential solutions for this significant issue.

2011 Oakridge National Laboratory Beneficiaries Study:

FERC and the HRBRRD board have contracted with Oakridge National Laboratory to identify beneficiaries of the Conklingville Dam. This is a comprehensive study of the downstream

beneficiaries, and we believe it will include beneficiaries beyond those identified by the HRBRRD staff in their 2010 flood protection benefit study. We will monitor this study to ensure that it fairly represents our communities and permit holders.

Our Future Role in the Lake Community:

As you can see, the SPC has achieved several goals that are very important to the property owners. Without these accomplishments, the values of the properties around the lake would have dropped significantly. The permit system, allowing for the exclusive use of the permitted area, is absolutely necessary for the continued enjoyment of these properties.

The rules changes and DEC impacts have been defeated for now; exclusive use has been restored to the permit system and we are currently on the winning side of the lawsuits that threaten us. As the only organization that provides legal representation to the lake community, our goal is to continue to advocate on behalf of the lake community and monitor, from a legal standpoint, all the potential threats to the way of life so enjoyed by those who live around the lake.

2011 Fund Raising Goal:

Our legal expenses since our inception in 2009 through the end of 2010 were \$141,006, representing 88% of our funds spent. The remaining 12% represent fund raising (7.3%) and general administrative expenses (insurance, accounting and office supplies, 4.7%).

Now that we have accomplished returning the permit system to the way it has been for the past 80 years, with the exception of our ongoing legal expense to represent our views in the ongoing lawsuits, our costs should be reduced as we spend more of our efforts in monitoring any future or renewed threats. However, we must raise money this year to replenish our treasury.

We encourage you to [contact us](#) with any questions, comments, or concerns via our [website](#).

Sincerely,

Joe Sullivan, Co-chair, SPC

Travis Mitchell, Co-chair, SPC

Please complete the information below and return with your donation. To help us reduce mailing costs, please be sure to include your email address.

Name: _____

email: _____

Home Address: _____

Lake Address: _____

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